

APPEAL NO. 050336  
FILED MARCH 31, 2005

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 11, 2005. The hearing officer determined that the respondent (claimant) had disability from his compensable injury of \_\_\_\_\_, from October 7, 2003, through March 7, 2004, and September 15, 2004, through the date of the CCH. The appellant (carrier) appealed the hearing officer's disability determination based on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The carrier stated in its appeal that it received the hearing officer's decision and order on January 26, 2005. Records of the Commission show that the decision of the hearing officer was distributed to the parties on January 21, 2005, and that the carrier's (City) representative signed for the Decision and Order on January 24, 2005. Under Rule 156.1(a), each carrier shall designate an (City) representative to act as an agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's (City) representative is notice from the Commission to the carrier. Therefore, the carrier received the decision of the hearing officer on January 24, 2005, when its (City) representative received it.

Therefore, the last date for the carrier to timely file an appeal would be Thursday, February 14, 2005. The carrier sent its appeal both by Federal Express, dated February 15, 2005, and received by the Commission on February 16, 2005, and by facsimile transmission (fax) on February 15, 2005, received by the Commission on February 16, 2005. The fax is time stamped at 17:01 p.m. (5:01 pm) on February 15, 2005. Since the fax was received after 5:00 p.m. it is stamped as filed with the

Commission on February 16, 2005. See Rule 102.3. Since the carrier's appeal was neither mailed nor faxed on or before February 14, 2005, the carrier's appeal was not timely filed.

We also note that the carrier's appeal was also untimely if the 15-day period was calculated from the deemed date of receipt. Rule 102.5(d) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be the first working day after the date the written communication was placed in a carrier's (City) representative's box located at the Commission's main office in (City) as indicated by the Commission's date stamp. See also Rule 143.3(d)(2).

A date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the carrier's (City) representative's box on January 21, 2005. The first working day after January 21, 2005, was January 24, 2005. Counting from the deemed date of receipt, January 24, 2005, the carrier's appeal was also untimely. The 15th day after January 24, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was February 14, 2005, and as previously noted, the carrier's appeal was sent by fax and by Federal Express on February 15, 2005, and both received by the Commission on February 16, 2005.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

The true corporate name of the insurance carrier is **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge